

**PROCEDURAL SAFEGUARDS NOTICE**  
**as required**  
**UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**  
**AMENDMENTS OF 1997**

In 1997, Congress made important changes to the Individuals with Disabilities Education Act (IDEA). The purpose of IDEA is to make sure that all children with disabilities have available a **free appropriate public education (FAPE)** that includes special education and related services designed to meet their unique needs. One important part of IDEA is to make sure that the rights of children with disabilities and their parents are protected. This document explains the protections available to parents and children under IDEA.

This procedural safeguards notice is one requirement of IDEA. It includes a full explanation of procedural safeguards for these topics (IDEA, 20 U.S.C. 1415(d)(2)):

1. NOTICE
2. PARENTAL CONSENT
3. PARENT PARTICIPATION IN MEETINGS AND ACCESS TO EDUCATIONAL RECORDS
4. INDEPENDENT EDUCATIONAL EVALUATION
5. OPPORTUNITY TO PRESENT COMPLAINTS
6. MEDIATION
7. DUE PROCESS HEARINGS
8. ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW
9. CIVIL ACTIONS
10. AWARD OF ATTORNEYS' FEES
11. YOUR CHILD'S PLACEMENT DURING PENDENCY OF DUE PROCESS PROCEEDINGS ("STAY PUT")
12. PROCEDURES FOR STUDENTS WHO ARE SUBJECT TO PLACEMENT IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING
13. UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE
14. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

## 1. NOTICE

**Procedural Safeguards Notice.** The **local education agency (LEA)** will give you this procedural safeguards notice describing the rights you have under IDEA Part B:

- (a) when your child is referred to the Admissions and Release Committee (**ARC**) because it is suspected your child may have a disability;
- (b) when the LEA notifies you of an ARC meeting to discuss the individualized education program (IEP);
- (c) when it is time to evaluate your child again (**reevaluation**); and
- (d) when either you or the LEA ask for mediation or a due process hearing.

The LEA makes sure that:

- (a) you understand the content of the notice;
- (b) there is written evidence that the notice requirements have been met; and
- (c) if your native language, or other mode of communication, is not a written language, the notice is translated orally or by other means for you in your native language or other mode of communication.

**Notice of a Proposed or Refused Action.** The LEA tells you in writing (**prior written notice**) what it is (or is not) going to do for your child before:

- (a) testing and gathering information about your child after the referral (**evaluation**);
- (b) deciding after the evaluation whether or not your child has a disability and may need special education and related services (**identification**);
- (c) providing an individualized educational program for your child or placing your child in a program providing special education and related services (**educational placement**), or

- (d) providing your child a free appropriate public education (**FAPE**).

The written notice of a proposed or refused action includes:

- (a) a description of what the LEA proposes (or refuses) to do for your child;
- (b) an explanation about why the LEA is proposing (or refusing) to do the action;
- (c) a description of any other options that the LEA considered and the reasons why those options were not chosen;
- (d) a description of each evaluation procedure, test, record, or report the LEA used as a basis for what the LEA is proposing (or refusing) to do;
- (e) a description of any other information that the LEA used to make the decision;
- (f) a statement that as the parent of a child with a disability you have rights under IDEA Part B and, unless the notice is for an initial referral for evaluation, how a description of the rights can be obtained; and
- (g) sources for you to contact for assistance in understanding the state and federal regulations under IDEA.

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## **2. PARENTAL CONSENT**

"**Consent**" means that you:

- (a) have been fully informed of all information relevant to the activity for which your consent is sought, in your native language, or other mode of communication;
- (b) understand and agree in writing to the carrying out of the activity for which your consent is sought (the consent describes the activity and lists any records which will be released and to whom); and
- (c) understand that giving your consent is voluntary and you may refuse or withdraw consent at any time.

The LEA asks for your written consent before it:

- (a) evaluates your child for the first time (**initial evaluation**) and again when it is time to reevaluate your child;
- (b) allows access to your child's educational records; and
- (c) places your child in a program providing special education and related services for the first time (**initial placement**).

Your consent for an initial evaluation is not consent for placement of your child in a special education program to receive specially designed instruction and related services.

### **Failure to Respond to Request for Consent for Reevaluation.**

Your written consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain your consent, and you have failed to respond. The LEA must maintain:

- (a) detailed records of telephone calls made or attempted and the results of those calls;
- (b) copies of correspondence sent to you and any responses received; and
- (c) detailed records of visits made to your home or place of employment and the results of those visits.

**Consent Not Required.** Your consent is not required for any changes in the special education program provided for your child after initial placement. But the LEA does have to tell you about any changes that are proposed or refused.

The LEA may ask you to sign the IEP to show that you took part in the ARC meeting to develop the IEP; however, your signature on the IEP is not required for the LEA to provide the specially designed instruction and related services described in the IEP. Also, the LEA may ask you to sign the record of the ARC meeting; however, your signature shows that you took part in the meeting and is not a record of your consent or agreement.

**Refused or Withdrawn Consent.** If you refuse to give written consent, or withdraw consent, the LEA may ask for mediation or a due process hearing. If

mediation does not result in you giving consent, the LEA may ask for a due process hearing. If the LEA asks for a due process hearing, the result could be that your child is evaluated or provided services without your consent.

The LEA notifies you if it plans to request mediation or a due process hearing. You also have the right to ask for mediation and a due process hearing. If you disagree with the results of the due process hearing you also have the right to appeal the decision.

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### **3. PARENT PARTICIPATION IN MEETINGS AND ACCESS TO EDUCATIONAL RECORDS**

**Parent Participation in Meetings.** You may participate in all ARC meetings. **ARC meetings** are prearranged meetings where LEA personnel and parents come together at the same time and place to discuss and make decisions about the identification, evaluation, and educational placement of your child; and the provision of FAPE to your child. ARC meetings are not activities or meetings where LEA personnel work together to develop a proposal that will be discussed in an ARC meeting.

The LEA provides written notice of each ARC meeting to make sure you have the opportunity to participate by:

- (a) notifying you of the meeting early enough to make sure you have an opportunity to attend;
- (b) scheduling the ARC meeting at a mutually agreed on time and place; and
- (c) indicating in the notice the purpose, time, and location of the meeting and who will be at the meeting.

**Access to Your Child's Records.** You may see all of your child's education records that are collected, maintained or used by the LEA. The LEA lets you see your child's records:

- (a) without unnecessary delay;
- (b) before any meeting about your child;
- (c) before any mediation or hearing; and
- (d) no later than forty-five (45) days after you ask to see the records.

Your right to see all of your child's education records includes the right to:

- (a) explanations and the meaning of the records;
- (b) ask the LEA for copies of the records containing the information, if failure to provide copies will prevent you from seeing the records; and
- (c) have someone else (your representative) see the records.

If any education record has information about more than one child, you have the right to see only the information about your child or be informed of only the information about your child.

If you ask, the LEA will give you a list of the types and locations of all education records collected, maintained, or used by the LEA.

The LEA may presume that a child's parents can see the child's records unless the LEA has been provided evidence that there is a court order, Kentucky law, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

**Record of Access.** The LEA keeps a record of everyone who obtains access to the child's education records that are collected, maintained or used under IDEA. The record includes the name of the person, the date the person was given access and the purpose for which the person was allowed to use the records. The LEA does not have to keep a record of access when you or employees of the LEA access the records.

**Fees.** The LEA may charge you a fee for copies of records, but the fee must not prevent you from seeing the records. The LEA may not charge a fee to search for or to retrieve the records.

After the first evaluation and any reevaluation is finished, the LEA must give you a free copy of the evaluation report. The ARC then meets to study all the evaluation information and decide if your child has a disability and needs special education and

related services because of the disability. You will be given a free copy of the information that describes how the ARC decided your child has a disability and needs special education or does not have a disability. You will be given a free copy of your child's initial IEP and a copy each time it is revised.

**Amendment Of Records At Parent's Request.** If you believe that any information in your child's education records is wrong, misleading or violates your child's privacy or other rights, you may ask the LEA to change the information (**record amendment**). The LEA decides whether to change the information within fourteen (14) working days of receiving the request. The LEA tells you if it has changed the information as you requested.

If the LEA refuses to change the information as you requested, the LEA gives you a written explanation telling you why it decided not to change the record. The LEA also tells you about your right to a hearing to challenge information in your child's education records (**record amendment hearing**). If you ask, the LEA holds a record amendment hearing within fourteen (14) days of the request for the hearing. A record amendment hearing is not the same as a due process hearing.

**Result Of Record Amendment Hearing.** If, as a result of the record amendment hearing, the LEA decides that the information is wrong, misleading or violates the privacy or other rights of your child, the LEA changes the information and tells you in writing.

If, as a result of the record amendment hearing, the LEA decides that the information is not wrong, misleading, or does not violate the privacy or other rights of your child, the LEA tells you in writing of your right to put a statement in your child's record commenting on the information or describing the reasons you disagree with the decision of the LEA.

Any explanation you place in the education records of your child as a result of a record amendment hearing is kept by the LEA as part of the record as long as the record or contested part is kept by the

LEA. If the records, or the contested part, are disclosed by the LEA to any party, your explanation or comments are disclosed also.

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#### **4. INDEPENDENT EDUCATIONAL EVALUATION**

If you disagree with the LEA's evaluation, you have the right to get an independent educational evaluation of your child at public expense. "**Independent evaluation**" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child. If you ask, the LEA will give you information about where an independent educational evaluation may be obtained. The criteria used for an independent educational evaluation at public expense is the same criteria the LEA uses when it evaluates your child, including the location of the evaluation and the qualifications of the examiner.

However, the LEA may ask for a due process hearing to show that its evaluation is appropriate. If the hearing officer decides that the LEA's evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. You have the right to appeal the decision of the hearing officer if you disagree.

If you obtain an independent educational evaluation at private expense, the results of the evaluation:

- (a) are considered by the LEA in any decision made about the provision of a free appropriate public education for your child; and
- (b) may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation is at public expense.

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#### **5. OPPORTUNITY TO PRESENT COMPLAINTS**

You may present complaints about any matter related to the identification, evaluation, or educational placement of your child or the provision

of a free appropriate public education to your child. Formal complaints result in an investigation and report completed by staff in the Division of Exceptional Children Services. You may also file a complaint that results in mediation or a due process hearing (see 6. MEDIATION and 7. DUE PROCESS HEARINGS).

**Formal Complaints.** You, another individual, or an organization may file a signed written complaint if it is believed that the LEA has violated a requirement of IDEA. The complaint is submitted to:

DIRECTOR  
DIVISION OF EXCEPTIONAL CHILDREN SERVICES  
8TH FLOOR, CAPITAL PLAZA TOWER  
500 MERO STREET  
FRANKFORT, KENTUCKY 40601  
(PHONE NUMBER 502/564-4970)

The complaint includes:

- (a) a statement that the LEA has violated a requirement of IDEA; and
- (b) the facts on which the statement is based.

The Division of Exceptional Children Services has sixty (60) calendar days after a complaint is filed to:

- (a) carry out an independent on-site investigation, if it determines that such an investigation is necessary;
- (b) give you or the person filing the complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (c) review all relevant information and make an independent determination as to whether the LEA is violating a requirement of IDEA; and
- (d) send a written decision to you or the person filing the complaint that addresses each allegation in the complaint.

The written decision contains:

- (a) findings of fact and conclusions;
- (b) the reasons for the final decision; and
- (c) procedures for effective implementation of the final decision including, if needed, technical assistance activities, negotiations, and corrective actions to achieve compliance.

The Division of Exceptional Children Services may extend the sixty (60) calendar days time limit only if exceptional circumstances exist with respect to a particular complaint.

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## **6. MEDIATION**

**Mediation** is an option offered to you and the LEA to settle differences concerning the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education for your child. Mediation is not required; however, it is made available each time a due process hearing is requested. You and the LEA may agree to use mediation, or some other informal procedures, to settle differences.

**Written Mediation Agreement.** Each agreement reached by you and the LEA in the mediation session is written. Discussions that occur during the mediation session are confidential and may not be used as evidence in any due process hearings or civil proceedings that take place later. You and the LEA may be required to sign a confidentiality pledge prior to the beginning of the mediation session.

Mediation is:

- (a) voluntary on the part of the parties;
- (b) not used to deny or delay your right to a due process hearing, or to deny any other rights afforded under IDEA;
- (c) conducted by a qualified and impartial mediator who is trained in effective mediation techniques; and
- (d) held in a location that is convenient to you and the LEA scheduled in a timely manner, that is, arrangements for the mediation session are usually completed within fifteen (15) calendar days of the assignment of the mediator.

**Qualified Mediator.** The Division of Exceptional Children Services maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The Division of Exceptional Children Services randomly assigns

mediators and pays the cost of mediation. Whenever a mediator is not selected on a random basis from that list, you and the LEA are involved in selecting the mediator, and are in agreement with the individual who is selected.

A copy of the guidelines for Mediation is available from the LEA or the Division of Exceptional Children Services. To request mediation, you and the LEA jointly submit the written request to:

DIRECTOR  
DIVISION OF EXCEPTIONAL CHILDREN SERVICES  
8TH FLOOR, CAPITAL PLAZA TOWER  
500 MERO STREET  
FRANKFORT, KENTUCKY 40601  
(PHONE NUMBER 502/564-4970)

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## **7. DUE PROCESS HEARINGS**

You or the LEA may initiate a due process hearing about anything the LEA proposes (or refuses) to begin, or change, about the identification, evaluation, educational placement of your child, or the provision of a free appropriate public education to your child.

**To Request a Due Process Hearing.** You send, or your attorney or advocate on behalf of your child sends, a request for a due process hearing to the DIRECTOR, DIVISION OF EXCEPTIONAL CHILDREN SERVICES. A form to help you in requesting a due process hearing is available from the:

DIRECTOR  
DIVISION OF EXCEPTIONAL CHILDREN SERVICES  
8TH FLOOR, CAPITAL PLAZA TOWER  
500 MERO STREET  
FRANKFORT, KENTUCKY 40601  
(PHONE NUMBER 502/564-4970)

The request for a due process hearing *must state*:

- (a) your child's name, the address of your child's residence, and the name of the school your child is attending;
- (b) a description of the problem about anything the LEA is proposing (or refusing) to begin or change, including facts about the problem; and
- (c) your proposed solution of the problem to the best of your knowledge at the time.

The LEA will tell you of any free or low-cost legal and other services available in the area if:

- (a) you request the information; or
- (b) you, or the LEA, initiate a due process hearing.

**Impartial Hearing Officer.** An impartial hearing officer is selected, trained and appointed by the Division of Exceptional Children Services. A due process hearing officer may not be a person:

- (a) who is an employee of the LEA or the Kentucky Department of Education which is involved in the education or care of your child, or
- (b) having a personal or professional interest which will conflict with his or her objectivity in the hearing.

A person who otherwise qualifies to conduct a due process hearing is not an employee of the LEA just because he or she is paid by the LEA to serve as a hearing officer. The LEA has a list of the persons who serve as hearing officers including the qualifications of each person.

**Hearing Rights.** You and the LEA have the right to:

- (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (b) present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to you or the LEA at least five (5) days before the hearing;
- (d) obtain a written or, if you choose, electronic verbatim record of the hearing; and
- (e) obtain written or, if you choose, electronic findings of fact and decisions.

At least five (5) business days prior to a due process hearing, you and the LEA disclose to each other:

- (a) all evaluations completed by that date; and
- (b) any recommendations based on the evaluations that you or the LEA intend to use at the hearing.

A hearing officer may bar either you or the LEA from introducing the relevant evaluations or recommendations at the hearing without the consent of the other party if you or the LEA fail to comply with this requirement.

Requests for due process hearings remain confidential. However, if you are involved in a hearing you are given the right to:

- (a) have your child, who is the subject of the hearing, present; and
- (b) open the hearing to the public.

Each hearing is conducted at a time and place which is reasonably convenient to you and your child; the LEA; and the hearing officer.

Not later than forty-five (45) days after the Division of Exceptional Children Services receives a request for a hearing; the hearing officer makes a final decision and mails a copy of the decision to you, the LEA, and the Division. However, at the request of either you or the LEA, the hearing officer may grant specific extensions of time beyond the forty-five (45) days of receipt of the request for the hearing. The hearing officer's decision is final unless you or the LEA appeal the decision under the procedures for Administrative Appeal

If you want more information about due process hearings ask your LEA or the Division of Exceptional Children Services.

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## **8. ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW**

If you or the LEA disagree with the findings of fact and decisions in the due process hearing, either you or the LEA may appeal to the Exceptional Children Appeals Board. Send your appeal in writing by certified mail to the Exceptional Children Appeals Board within thirty (30) calendar days after the hearing officer's decision is received by the Division of Exceptional Children Services.

To request an appeal, you send, or your attorney or

advocate on behalf of your child sends, a written request for an appeal to the:

EXCEPTIONAL CHILDREN APPEALS BOARD  
DIVISION OF EXCEPTIONAL CHILDREN SERVICES  
8th FLOOR, CAPITAL PLAZA TOWER  
500 MERO STREET  
FRANKFORT, KENTUCKY 40601  
(PHONE NO. (502) 564-4970)

If you request an appeal, the Exceptional Children Appeals Board will conduct a fair, impartial review of the hearing. No later than thirty (30) days after the receipt of your written request for the appeal is received, the Exceptional Children Appeals Board reviews the hearing officer's findings of fact and decision and issues a final decision. . However, at the request of either you or the LEA, the hearing officer may grant specific extensions of time beyond the thirty (30) days of receipt of the request for the hearing. A copy of the decision is mailed to you, the LEA, and the Division of Exceptional Children Services.

The decision made by the Exceptional Children Appeals Board is final unless you or the LEA appeal or bring civil action in court.

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## **9. CIVIL ACTION**

If you or the LEA disagree with the decision of the Exceptional Children Appeals Board, you or the LEA have the right to appeal or bring a civil action in a State Court or Federal District Court.

**Exhaustion of Administrative Remedies.** You may file a civil action under any other federal law that protects the rights of your child with a disability, such as the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities. However, if your child is also eligible under IDEA, then in most cases, before you file a civil action under one of these federal laws, you must have gone through a due process hearing and administrative appeal (**exhausted administrative remedies**).

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## **10. AWARD OF ATTORNEYS' FEES**

**In General.** The district courts of the United States may award reasonable attorneys' fees to you or the guardian of a child with a disability who is the prevailing party in any action or proceeding brought under Part B of the Individuals with Disabilities Education Act (IDEA).

**Prohibition of Attorneys' Fees and Related Costs.** Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under IDEA for services performed following the time of a *written offer of settlement* to you as the parent if:

- (a) the offer is made at any time more than ten (10) days before the administrative or judicial proceeding begins;
- (b) the offer is not accepted within ten (10) days; and
- (c) the court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

However, an award of attorneys' fees and related costs may be made to you if you are the prevailing party and you were substantially justified in rejecting the written settlement offer.

Attorneys' fees may not be awarded relating to any ARC meeting unless the meeting is held as a result of an administrative proceeding or judicial action, or, mediation that is conducted prior to the filing of a request for a due process hearing.

**Reduction In Amount Of Attorneys' Fees.** The court reduces the amount of the attorneys' fees awarded under IDEA accordingly if the court finds that:

- (a) you, during the course of the action or proceeding, unreasonably delayed the final resolution of the disagreement;
- (b) the rate is too high for the attorneys' fees;
- (c) the time spent and legal services furnished were excessive considering the nature of the action or

proceeding; or

- (d) the attorney representing you did not provide the appropriate information in the due process hearing request including:
  1. your child's name, the address of your child's residence, and the name of the school your child is attending;
  2. a description of the problem relating to what the LEA is proposing (or refusing) to begin or change, including facts about the problem; and
  3. your proposed solution of the problem to the best of your knowledge at the time.

However, the court does not reduce the amount of attorneys' fees if the court finds that the State or LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation of IDEA.

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## **11. YOUR CHILD'S PLACEMENT DURING PENDING OF DUE PROCESS PROCEEDINGS ("Stay Put")**

If your child is involved in any administrative or judicial proceeding your child remains in his or her present educational placement unless you and the LEA agree otherwise, *except* as described in the next section, PROCEDURES FOR STUDENTS WHO ARE SUBJECT TO PLACEMENT IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING.

If the administrative or judicial proceeding involves an application for initial admission to the LEA, your child, with your consent, is placed in the LEA until the completion of all the proceedings.

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## **12. PROCEDURES FOR STUDENTS WHO ARE SUBJECT TO PLACEMENT IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING**

### **Removal For Less Than Ten (10) School Days.**

School personnel may order the removal of your child from your child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more



than ten (10) school days (to the extent such alternatives would be applied to children without disabilities). Removing your child with disabilities from your child's current educational placement for less than ten (10) school days during a school year is not a change in placement under IDEA.

**Interim Alternative Educational Settings for Up to Forty-five (45) Days.** Your child with a disability is subject to placement in an interim alternative educational placement for up to forty-five (45) days if your child:

- (a) carries a **weapon** to school or to a school function under the jurisdiction of the LEA or the State;
- (b) knowingly possesses or uses **illegal drugs** or sells or solicits the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State; or
- (c) is in a current placement that is substantially likely to **result in injury** to your child or to others.

The following definitions apply:

- (a) **"Controlled substance"** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (b) **"Illegal drug"** means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.
- (c) **"Weapon"** means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of causing death or serious injury, except that the term does not include a pocket knife with a blade of less than two and one half inches in length (paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code).

**Weapons, Illegal Drugs, and Controlled Substances.** If your child carries a **weapon** to school or to a school function under the jurisdiction of the LEA or the State; or knowingly possesses or uses **illegal drugs** or sells or solicits the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State, then school personnel may order a change in your child's placement to an interim alternative educational setting. The change in setting is for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days.

If school personnel order a change in placement because of drugs or weapons, the admissions and release committee (**ARC**) meets to decide the nature of the interim alternative educational setting. The ARC selects an interim alternative educational setting which will:

- (a) enable your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
- (b) include services and modifications designed to address your child's behavior that caused the change in placement so that the behavior does not happen again.

**Behavioral Assessment and Behavioral Intervention Plan.** If school personnel order a change in your child's placement to an interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, the ARC must meet either before, or not later than ten (10) days after the order. If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for your child before the behavior that resulted in the order; the ARC develops an assessment plan and appropriate behavioral interventions to address that behavior. However, if your child already has a behavioral intervention plan, the ARC reviews the

plan and modifies it, as necessary, to address the behavior.

**Placement Substantially Likely to Result in Injury to Your Child or to Others.**

If school personnel believe that keeping your child in the current placement is substantially likely to **result in injury** to your child or to others, a due process hearing may be requested. A due process hearing officer may order a change in the placement of your child to an interim alternative educational setting for not more than forty-five (45) days **if** the hearing officer:

- (a) determines that the LEA has demonstrated by **substantial evidence** that maintaining the current placement of your child is substantially likely to result in injury to your child or to others;
- (b) considers the appropriateness of your child's current placement;
- (c) considers whether the LEA has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
- (d) determines that the interim alternative educational setting:
  - 1. enables your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
  - 2. includes services and modifications designed to address the behavior that resulted in the hearing so that the behavior does not happen again.

**"Substantial evidence"** means beyond a preponderance of the evidence.

If the hearing officer orders a change in placement because of drugs or weapons, the admissions and release committee (**ARC**) meets to decide the nature of the interim alternative educational setting. The ARC selects the interim alternative educational setting which will:

- (a) enable your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
- (b) include services and modifications designed to address your child's behavior that caused the change in placement so that the behavior does not happen again.

**Manifestation Determination Review.** You must be notified and the ARC must meet if school personnel consider a disciplinary action for your child with a disability who:

- (a) carries a **weapon** to school or to a school function under the jurisdiction of the LEA or the State;
- (b) knowingly possesses or uses **illegal drugs** or sells or solicits the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State;
- (c) is in a current placement that is substantially likely to **result in injury** to your child or to others; or
- (d) has engaged in other behavior that **violated any rule or code of conduct** of the local educational agency that applies to all children and a disciplinary action involving a change of placement for more than ten (10) school days in a given school year is considered for your child.

If school personnel consider disciplinary action, then not later than the date on which the decision to take that action is made, you must be notified of that decision and of all procedural safeguards under IDEA. Also, immediately, if possible, but not later than ten (10) school days after the date on which the decision to take that action is made, a review is conducted by the ARC and other qualified personnel of the relationship between your child's disability and the behavior subject to the disciplinary action.

**Conduct Of Review.** In carrying out a review of the relationship between your child's disability and the behavior subject to the disciplinary action, the ARC

may determine that the behavior of your child was **not** a manifestation of your child's disability **only if** the ARC:

- (a) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--
  - 1. evaluation and diagnostic results, including any results or other relevant information you have;
  - 2. observations of your child; and
  - 3. your child's IEP and placement; and
- (b) then determines that--
  - 1. in relationship to the behavior subject to disciplinary action, your child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with your child's IEP and placement;
  - 2. your child's disability did not impair your child's ability to understand the impact and consequences of the behavior that caused the disciplinary action; and
  - 3. your child's disability did not impair your child's ability to control the behavior that caused the disciplinary action.

**Determination That Behavior Was Manifestation of Disability.** If the ARC decides that your child's behavior was a manifestation of your child's disability (the behavior was caused by, or was a result of the disability), the disciplinary procedures that apply to children without disabilities **may not be applied** to your child.

**Determination That Behavior Was Not Manifestation of Disability.** If the ARC decides that your child's behavior was not a manifestation of your child's disability (the behavior was not caused by, or was not a result of the disability), then the disciplinary procedures that apply to children without disabilities **may be applied** to your child in the same manner in which they would be applied to children without disabilities, except a free appropriate public education is made available.

If the ARC decides that the behavior was not a manifestation of the disability and the LEA initiates disciplinary procedures that apply to all children, then the LEA makes sure that the special education and disciplinary records of your child with a disability are sent to the person or persons making the final decision about the disciplinary action.

**Parent Appeal.** If you disagree with the determination that your child's behavior was not a manifestation of your child's disability or with any decision regarding the interim alternative educational placement, you may request a hearing. If you request, the Division of Exceptional Children Services and the LEA will arrange for an **expedited hearing.**

**Review of Manifestation Decision.** In reviewing a decision with respect to the manifestation determination, the hearing officer determines whether the LEA has demonstrated that your child's behavior was not a manifestation of your child's disability only if the ARC:

- (a) first considered, in terms of the behavior subject to disciplinary action, all relevant information, including--
  - 1. evaluation and diagnostic results, including any results or other relevant information supplied by you;
  - 2. observations of your child; and
  - 3. your child's IEP and placement; and
- (b) then determined that--
  - 1. in relationship to the behavior subject to disciplinary action, your child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with your child's IEP and placement;
  - 2. your child's disability did not impair your child's ability to understand the impact and consequences of the behavior that caused the disciplinary action; and
  - 3. your child's disability did not impair your child's ability to control the behavior that caused the disciplinary action.

**Review of Interim Alternative Educational Placement Decision.**

In reviewing a decision to change the educational placement to an interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, the hearing officer must:

- (a) determine that the LEA has demonstrated by **substantial evidence** that maintaining the current placement of your child is substantially likely to result in injury to your child or to others;
- (b) consider the appropriateness of your child's current placement;
- (c) consider whether the LEA has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
- (d) determine that the interim alternative educational setting:
  1. enables your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
  2. includes services and modifications designed to address the behavior that resulted in the hearing so that the behavior does not happen again.

**Placement During Appeals.** If you request a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination for your child with a disability who carries a **weapon** to school or to a school function under the jurisdiction of the LEA or the State; or knowingly possesses or uses **illegal drugs** or sells or solicits the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State, or is in a current placement that is substantially likely to **result in injury** to your child or to others, then your child remains in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period set by school

personnel or the hearing officer, whichever occurs first, unless you and the LEA agree otherwise.

**Current Placement.** If school personnel propose to change your child's placement after expiration of the interim alternative educational placement and your child is placed in an interim alternative educational setting because your child carries a **weapon** to school or to a school function under the jurisdiction of the LEA or the State; knowingly possesses or uses **illegal drugs** or sells or solicits the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State; or is in a current placement that is substantially likely to **result in injury** to your child or to others, then during the pendency of any proceeding to challenge the proposed change in placement, your child remains in the current placement (your child's placement prior to the interim alternative educational setting). However, if school personnel maintain that it is dangerous for your child to be in the current placement (your child's placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the LEA may request an **expedited hearing**.

In the **expedited hearing** to determine whether your child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer:

- (a) determines that the LEA has demonstrated by **substantial evidence** that maintaining the current placement of your child is substantially likely to result in injury to your child or to others;
- (b) considers the appropriateness of your child's current placement;
- (c) considers whether the LEA has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
- (d) determines that the interim alternative educational setting:
  1. enables your child to continue to participate in the general curriculum, although in another setting, and to continue to receive

those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and

2. includes services and modifications designed to address the behavior that resulted in the hearing so that the behavior does not happen again.

**Protections For Children Not Yet Eligible For Special Education And Related Services.**

If your child has not been determined to be eligible for special education and related services under IDEA and your child has engaged in behavior that **violated any rule or code of conduct of the LEA**, including carrying a **weapon** to school or to a school function under the jurisdiction of the LEA or the State; or knowingly possessing or using **illegal drugs** or selling or soliciting the sale of a **controlled substance** while at school or a school function under the jurisdiction of the LEA or the State, then you **may assert** any of the protections provided for in IDEA **if** the LEA had knowledge (as described below) that your child was a child with a disability before the behavior that caused the disciplinary action.

The LEA is deemed to have knowledge that your child is a child with a disability if:

- (a) you or your child have expressed concern in writing (unless you are illiterate or have a disability that prevents compliance with these requirements) to personnel of the LEA that your child is in need of special education and related services;
- (b) the behavior or performance of your child demonstrates the need for special education and related services;
- (c) you have requested an evaluation of your child to determine if your child has a disability and needs special education and related services because of the disability; or
- (d) the teacher of your child, or other LEA personnel, has expressed concern about the behavior or performance of your child to the

LEA's director of special education or to other personnel in the LEA.

If the LEA does not have knowledge that your child is a child with a disability prior to taking disciplinary measures against your child, your child may be subjected to the same disciplinary measures as those applied to children without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation is conducted in an **expedited manner**.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by you, the LEA provides special education and related services in accordance with the provisions of IDEA. Your child remains in the educational placement determined by school personnel pending the results of the evaluation.

**Law Enforcement And Judicial Authorities.**

Nothing in IDEA prohibits the LEA from reporting a crime committed by a child with a disability to appropriate authorities or prevents Kentucky law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and Kentucky law to crimes committed by a child with a disability.

If the LEA reports a crime committed by a child with a disability, the LEA sends copies of the child's special education and disciplinary records to appropriate authorities where the crime was reported.

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**13. UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE**

**Child Identification and Evaluation.** If your child is enrolled in a private, including parochial, elementary or secondary school in Kentucky, the IDEA

requirements for child identification and evaluation apply to your child.

**Children Placed In, Or Referred To, Private Schools By LEA.** If your child is placed in, or referred to, other public or private schools or facilities by the State or your child's LEA, as the means of carrying out the requirements of IDEA or any other applicable law requiring the provision of special education and related services to all children with disabilities, then special education and related services are provided in accordance with an individualized education program (IEP) at no cost to you.

**Payment For Education Of Children Enrolled In Private Schools Without Consent Of Or Referral By The LEA.** The LEA is not required to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the LEA made a free appropriate public education available to your child and you elected to place your child in the private school or facility.

**Reimbursement For Private School Placement.** If you and the LEA disagree about the availability of a free appropriate public education for your child or the financial responsibility for the cost of private school placement, you may request mediation or a due process hearing. If your child with a disability *previously received special education and related services under the authority of the LEA*, and you enroll your child in a private elementary or secondary school *without the consent of or referral by the LEA*, a hearing officer or a court may require the LEA to reimburse you for the cost of that enrollment if the decision is that the LEA did not make a free appropriate public education available to your child in a timely manner prior to that enrollment.

The cost of reimbursement may be reduced or denied --

- (a) if at the most recent ARC meeting that you attended prior to removal of your child from the LEA, you did not inform the ARC that you were

rejecting the placement proposed by the LEA to provide a free appropriate public education to your child, including stating your concerns and your intent to enroll your child in a private school at public expense;

- (b) if ten (10) business days (including any holidays that occur on a business day) prior to the removal of your child from the LEA, you did not give written notice to the LEA of the information described in (a);
- (c) if prior to the removal of your child from the LEA, the LEA informed you, through the notice requirements for a proposed of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; or
- (d) upon a judicial finding of unreasonableness with respect to actions taken by you.

However, the cost of reimbursement may not be reduced or denied because of your failure to provide notice if:

- (a) you are illiterate and cannot write in English;
- (b) compliance would likely result in physical or serious emotional harm to your child;
- (c) the school prevented you from providing the notice; or
- (d) you had not received this procedural safeguards notice of the requirement.

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#### **14. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

When your child with a disability reaches the age of eighteen (18), which is the age of majority under Kentucky law, the LEA provides notice to both you and your child unless you have notified the LEA that you are your child's guardian under Kentucky law.

The notice states that:

- (a) all rights accorded to you under IDEA transfer to your child; and
- (b) all rights accorded to you under IDEA transfer to your child if your child is incarcerated in an adult or juvenile Federal, State, or local correctional institution.

Kentucky laws for guardianship recognize the varying degrees of ability of individuals with disabilities. The District Courts have exclusive jurisdiction over all proceedings involving the appointment and removal of guardians. Guardianship for individuals with disabilities is ordered by the court only to the extent necessary based on each individual's actual mental and adaptive limitations.

If you believe your child needs some degree of guardianship and you wish to be the guardian, you must petition the District Court. The court will determine if your child needs a guardian and the degree of guardianship that is needed. (Under

Kentucky law, partial guardianship is the preferred degree of protection and assistance for an individual with a disability.) Regardless of the degree of guardianship your child needs, the guardianship must be designed to encourage the development of maximum self-reliance and independence of your child.

If you need additional information about guardianship, you may wish to contact: your local District Court Clerk's office; your local County Attorney's office; the Division of Protection and Advocacy (800/372-2988); or Citizens Advocacy (606/491-3344).

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